

Pro Se 14 (Rev. 09/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ALABAMA

Corry Averett

Plaintiff

(Write your full name. No more than one plaintiff may be named in a complaint.)

-v-

State of Alabama, Alabama Dept. of Corrections,
Defendant(s) "see attached"

(Write the full name of each defendant who is being sued. If the names of all of the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here. Your complaint may be brought in this court only if one or more of the named defendants is located within this district.)

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U.S. DISTRICT COURT
N.D. OF ALABAMA

Case No.

221-CV-406-LCB-SGC
(to be filled in by the Clerk's Office)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS (Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee of \$400.00 or an Application to Proceed *In Forma Pauperis*.

Mail the original complaint and the filing fee of \$400.00 or an Application to Proceed *In Forma Pauperis* to the Clerk of the United States District Court for the Northern District of Alabama, Room 140, Hugo L. Black U.S. Courthouse, 1729 5th Avenue North, Birmingham, Alabama 35203-2195.

Attachment

(continued...) From page 1 "Defendants"

3. Warden Kenneth Peters
4. Captain D. Johnson
5. Lieutenant M. Jenkins
6. Lieutenant E. Watts
7. Sgt. R. Gudgey
8. Officer C. Sanders
9. Classification Specialist Betty Stevenson

I. The Parties to this Complaint**A. The Plaintiff**

Provide the information below for the plaintiff named in the complaint.

Name

All other names by which
you have been known:

ID Number

Current Institution

Address

Corry Averett
—
204267
Donaldson Correctional Facility
100 Warrior Lane
Bessemer Alabama 35023
City State Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed

Defendant No. 1

Name

Job or Title (*if known*)

Shield Number

Employer

Address

State of Alabama
Corporation and/or Government Agency
State of Alabama and/or United States of America
251 S. Lawrence Street
Montgomery Alabama 36104
City State Zip Code

☒ Individual Capacity ☒ Official Capacity

Defendant No. 2

Name

Job or Title (*if known*)

Shield Number

Employer

Address

Alabama Department of Corrections
Government Agency and/or Organization
State of Alabama
301 S. Ripley Street, P.O. Box 301501
Montgomery Alabama 36130
City State Zip Code

☒ Individual Capacity ☒ Official Capacity

Defendant No. 3

Name Warden Kenneth Peters
 Job or Title (if known) Correctional Warden
 Shield Number _____
 Employer State of Alabama Department of Corrections / Donaldson CF
 Address 100 Warrior Lane
Bessemer Alabama 35023
 City State Zip Code
☒ Individual Capacity ☒ Official Capacity

Defendant No. 4

Name Captain D. Johnson
 Job or Title (if known) Correctional Captain
 Shield Number _____
 Employer State of Alabama Dept. of Corrections / Donaldson CF
 Address 100 Warrior Lane
Bessemer Alabama 35023
 City State Zip Code
☒ Individual Capacity ☒ Official Capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal law].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply);

- ☐ Federal officials (a *Bivens* claim)
☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities, secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

My 8th and 14th Amendment rights are being violated. I'm being deprived of Due Process and subjected to cruel and unusual punishment.

Attachment

continued...) from page 3, "The Defendants"

Defendant No. 5

Name: Mohammad S. Jenkins

Job or Title (if known): Correctional Lieutenant

Shield Number:

Employer: State of Alabama Dept. of Corrections / Donaldson CF

Address: 100 Warrior Lane

Bessemer, Alabama 35023

☒ Individual Capacity

☒ Official Capacity

Defendant No. 6

Name: Eddie Watts

Job or Title (if known): Correctional Lieutenant

Shield Number:

Employer: State of Alabama Dept. of Corrections / Donaldson CF

Address: 100 Warrior Lane

Bessemer, Alabama 35023

☒ Individual Capacity

☒ Official Capacity

Defendant No. 7

Name: Richard W. Godsey

Job or Title (if Known): Correctional Sergeant

Shield Number:

Employer: State of Alabama Dept. of Corrections / Donaldson CF

Address: 100 Warrior Lane

Bessemer, Alabama 35023

☒ Individual Capacity

☒ Official Capacity

Defendant No. 8

Name: Clifton A. Sanders

Job or Title (if Known): Correctional Officer

Shield Number:

Employer: State of Alabama Dept. of Corrections / Donaldson CF

Address: 100 Warrior Lane

Bessemer, Alabama 35023

☒ Individual Capacity

☒ Official Capacity

Defendant No. 9

Name: Betty Stevenson

Job or Title (if Known): Classification Specialist

Shield Number:

Employer: State of Alabama Dept. of Corrections / Donaldson CF

Address: 100 Warrior Lane

Bessemer, Alabama 35023

☒ Individual Capacity

☒ Official Capacity

- C. Plaintiffs suing under *Bivens* may only recover for violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

All defendants acted under color of State law being employed by the State of Alabama and for ADOC, and are sworn under oath to uphold such laws.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- ☐ Pretrial Detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other _____
(*explain*)

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

"See Attached"

IV. Statement of Claim

On April 27, 2020, Petitioner was charged with a total of three (3) Administrative Rule Violations, different rule violations, which occurred at the same place and time, and arose out of the same incident.

Petitioner was found "Guilty" at Disciplinary Court on all three rule violation charges, on the same date, at the same time, in the same hearing and by the same hearing officer and/or judge.

Administrative Regulation 403 is the discipline regulation which governs inmate conduct. The regulation requires that ADOC Employees are responsible for knowing and following the procedures established by this Administrative Regulation and uses mandatory language directing that "witnesses" shall not serve as a hearing officer. On May 7, 2020, at 7:30 a.m. the Administrative Rule Violations alleged by Lt. M. Jenkins and Officer C. Sanders against Petitioner, were heard by Sgt. R. Godsey. Lt. M. Jenkins specifically names Lt. E. Watts and Sgt. R. Godsey as witnesses to this incident. Officer C. Sanders was not present for the hearing.

In June, 2020, Petitioner filed a Petition For Writ of Certiorari, in the Circuit Court of Montgomery County, Alabama. Contained within the petition were exhibits showing plain language of the 403 discipline regulation, along with the violation of a witness being the hearing officer. A virtual hearing was set for November 17, 2020, at 9:00 a.m. The hearing was never held.

Circuit Judge Greg Griffin ordered the case adjudged and dismissed, further ordering the amount of \$246.00 to be taxed against Petitioner's PMOD account. Before the filing of Petitioner's Petition For Writ of Certiorari, several grievances and requests for disapproval were made to Warden Peters, Captain Johnson and the State of Alabama Department of Corrections Alabama Criminal Justice Center. Per recommendation of Classification

Specialist Betty Stevenson, Petitioner's custody was closed due to the three Administrative Rule Violations without a further glimpse into the Hearing Officer's violation of the same Administrative Regulation.

Officers: C. Oden; A. Hill; were present in the Shift Office on May 7, 2020, during the disciplinary hearing.

- C. What date and approximate time did the events giving rise to your claim(s) occur?
May 7, 2020, at approximately 7:30a.m., (Disciplinary Hearing);
April 27, 2020, (date of incident).
- D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)
I was placed in Segregation from April 2020, til the present day. I'm being
refused medical treatment, and subjected to harassment daily due to other ongoing civil suits.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries in detail.

On April 27, 2020, Lt. M. Jenkins, struck me several times with closed fists. My health and
mental conditions are declining rapidly due to being housed in Segregation and medical treatment being refused.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I request of the Court to view the facts of and surrounding this case, and overturn the
decision made by the Montgomery County Circuit Court. I also request that the Court
compel the State of Alabama to imply an appellate procedure on the institutional
level for the Administrative Regulation 403. Further, I request \$60,000.00 (sixty-
thousand) dollars in actual damages due to being deprived of due process of law;
housed in unsanitary and dangerous living conditions; and an additional \$45,000.00
(forty-five thousand) dollars, for the excessive force, cruel and unusual punishment,
and harassment, from each defendant that is hereby a party to this action.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

William E. Donaldson Correctional Facility

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☐ Yes

☒ No

☐ Do Not Know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☒ No

☐ Do Not Know

If yes, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance

1. Where did you file the grievance?

First, at the Institutional level; Second, the ADOC; Third, Montgomery County Circuit Court

2. What did you claim in your grievance?

Violations of Due Process and Cruel and Unusual Punishment

3. What was the result, if any?

03-CV-2020-316.00; Case dismissed

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

I filed grievances and requests to disapprove the disciplinaries to Warden K. Peters and Capt. D. Johnson. I received no response. I filed grievances and requests to disapprove the disciplinaries to the State of Alabama Dept. of Corrections, Alabama Criminal Justice Center. I received no response. I filed a Petition For Writ of Certiorari in the Circuit Court of Montgomery County, Alabama. The case was dismissed: 03-CV-2020-316.00

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

3. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had any cases dismissed based on grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted?

☐ Yes

☒ No

If yes, state which court dismissed your case(s), when this occurred, and attach a copy of the order(s) if possible.

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) N/A

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

N/A

IX. Certification and Closing

Under Federal Rule of Civil-Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Printed Name of Plaintiff

Corry Averett

Prison Identification #

204267

Prison Address

100 Warrior Lane (Donaldson Correctional Facility)BessemerAlabama35023

City

State

Zip Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

February 24, 2021

(Date)

Corry Averett
Signature of Plaintiff